

ST. SCHOLASTICA ACADEMY

IBLA 78-557

Decided April 3, 1979

Appeal from a decision of the Colorado State Office, Bureau of Land Management, requiring past due rental under a recreation and public purposes lease.

Affirmed as modified.

1. Regulations: Binding on the Secretary--Regulations: Force and Effect as Law

The Secretary of the Interior is bound by his duly promulgated regulations, and such regulations have the force and effect of law.

2. Accounts: Payments--Recreation and Public Purposes Act

Where a lease under the Recreation and Public Purposes Act, as amended, 43 U.S.C. § 869 (1976), erroneously states the 1-year rental as being the rental for 5 years, and the lessee knew or had reason to know of the error, the error is a unilateral mistake, and the lease may be properly corrected to show the true rental, or the lease may be rescinded if appellant does not desire to be bound by the reformed agreement.

APPEARANCES: St. Scholastica Academy, pro se.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Appellant, St. Scholastica Academy, appeals from a decision of the Colorado State Office, Bureau of Land Management (BLM), requiring past due rental under a recreation and public purposes lease.

The original decision dated March 3, 1976, granted appellant a 20-year lease on application C-22717, filed pursuant to the provisions of the Recreation and Public Purposes Act of June 24, 1926 (44 Stat. 741) (Act), as amended, 43 U.S.C. § 869 et seq. (1976), with rental for the first 5 years stated to be \$242.25, payable in advance. Subsequently, by letter dated March 18, 1976, BLM acknowledged that rental in the amount of \$242.25 for the first 5 years of the lease, or until March 18, 1981, had been paid.

Later, BLM in a decision dated June 15, 1978, required an additional payment from the appellant on the basis that in the March 3, 1976, decision, as well as in the March 18, 1976, acknowledgement letter, rental figures had been erroneously quoted. It founded its demand on 43 CFR 2741.7, which required the payment of fair market value for the use and occupancy of public lands. BLM stated that the fair market value of the subject land was determined to be \$1,615 per year or \$7,050 for a 5-year period by a BLM appraisal report dated February 2, 1976. By applying the Special Pricing Program guidelines to the appellant, it was decided that appellant was entitled an 85 percent rental discount. These guidelines are designed to take into consideration the proposed use of the land, here, education. On this basis the rental was determined to be \$242.25 annually or \$1,057.50 for the 5-year period. Because of the erroneous statement, the appellant had paid \$242.25 for a 5-year rental period instead of \$1,057.50. By its June 15, 1978, decision BLM corrected the error and required appellant to submit the balance of \$815.25 to satisfy the requirements of 43 CFR 2741.7.

On appeal, appellant contends that in good faith it accepted the March 3, 1976, decision as to the amount of the rental, that it moved forward with the project and encumbered itself in reliance on the statement of the rental. It requests the Board to uphold the March 3, 1976, decision as final regarding lease C-22717.

[1] 43 CFR 2741.7 establishes the price to be asked from an applicant for the use of land under the Recreation and Public Purposes Act. This provides:

(a) Conveyances under the act for historic monument purposes to a State, county, or other State or Federal instrumentality or political subdivision, will be made without any monetary consideration.

(b) Sales to nonprofit associations or nonprofit corporations will be made at prices fixed through appraisal of the fair market value of the land, taking into consideration the purposes for which the lands will be used.

(c) All other sales will be made at prices fixed through appraisal of the fair market value of the lands or

otherwise, taking into consideration the purpose for which the land will be used.

(d) Annual rentals under leases will be fair and reasonable and will be based on the value of the lands as determined by the requirements of paragraphs (b) and (c) of this section.

(e) A patent applicant, when the land has been appraised, will be required to pay the full purchase price before the patent will be issued. The rental under a lease shall be payable in advance. Upon appraisal of the land, a lease applicant will be required to pay at least the first year's rental before the lease will be issued. Upon the voluntary relinquishment of a lease before the expiration of its term, any rental paid for the unexpired portion of the term will be returned to the lessee upon a proper application for repayment to the extent that the amount paid covers a full lease year or years of the remainder of the term of the original lease.

A duly promulgated regulation has the force and effect of law, by which the Secretary and his delegates are bound as long as the regulation remains in effect. Rodway v. U.S. Department of Agriculture, 514 F.2d 809 (D.C. Cir. 1975); G.S.A. v. Benson, 415 F.2d 878 (9th Cir. 1969); Whatloff v. United States, 355 F.2d 473 (8th Cir. 1966); Arizona Public Service Co., 20 IBLA 120 (1975); Wilfred Plomis, 34 IBLA 222 (1978). Pursuant to the requirements set forth in 43 CFR 2741.7, BLM, as a delegate of the Secretary, and in consideration of the public interest, has determined the proper annual rental for the subject land to be \$242.25. Therefore, in the absence of evidence that such rental was arbitrarily or capriciously established, we find BLM properly determined the amount of the rental for lease. C-22717

[2] In a letter dated February 27, 1976, and received on March 1, 1976, Emily L. Harman, Science Consultant to appellant, wrote thus to the state director:

Dear Mr. Andrus:

I am writing in regard to our petition - application C-22717 for lease under the provisions set forth in the Recreation and Public Purposes Act a parcel (20-acre) of National Resource Lands located in the SE 1/4 SE 1/4 of Section No. 18, T. 19 S., R. 72 W., Fremont County, Colorado, an area known as Poverty Gulch. I am sure you will recall our application for the leased acreage to be developed into a field station for environmental education

as I was informed by the Canon City Office that it was given a priority rating and by Jim Enez that an alert of the application was made by the State Office when it was received in Denver.

My reason for writing concerns the time delay which we are experiencing in getting the lease. I was told, during a meeting with Andy Senti in the presence of John Russif in Denver on January 27, 1976, that we could expect the final clearance on the application to be completed and the lease in hand by February 25, 1976. When this date passed with no lease in hand, I called Henry Beauchamp of the Canon City Office and requested that he call Denver which he did. The information he relayed to me from Andy Senti was that it would NOW be the middle of March before we could have the lease in hand because the Appraisal Office had not yet completed its final report. This delayed time factor is working against us for any development yet this school year. I think you can understand my concern over this new setback since we have patiently waited one year and one month for our "priority" application to get to its present state in processing. We have received a plenary appraisal and rental figure and, although it is considerably higher than we were led to believe it would be, we have indicated our willingness to pay the \$242 annual rental figure. [Emphasis supplied.]

We have several excellent potential funding sources identified and proposals waiting to be submitted to these sources. We also have materials for the first major building donated by a local businessman. We have the man-power for construction and the enthusiastic support of a number of key persons in Canon City and Fremont County. The only necessity lacking is the lease. I would hope, therefore, that you might in some way expedite the final stage of processing so that we might be able to begin development before the middle of March.

On behalf of the applicant, the persons who have pledged support and assistance in the development of the field station, and the youth of this county who stand to gain the most from the station, I would be grateful to you for your efforts in bringing about a prompt conclusion of the application processing and granting of lease.

From the above letter it is clear that appellant knew or had reason to know that the correct rental for the lease in question, based on 15 percent of the fair market value, was \$242.25 per year,

rather than per 5 years. In the circumstances, we have a unilateral mistake as to a term of the contract. Courts have held in such a situation the contract may be reformed or rescinded. Eastern Freightways, Inc., 257 F.2d 703 (2nd Cir. 1958); State of Conn. v. McGraw, 41 F. Supp. 369 (D.C. Conn. 1941); 3 Corbin on Contracts § 610 (1960); 17 AM. JUR. 2d Contracts § 146 (1964). Accordingly, we find that the lease may properly be reformed to show the correct rental as \$242.25 per year. Further, we hold that if appellant does not wish to be bound by the contract with the rental corrected, within 30 days from the date of the receipt of this decision, appellant should so inform BLM in writing, and the contract or lease will be rescinded. If appellant within that time frame does not so advise BLM, the contract will be in effect with the correct rental being \$242.25 per year.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision herein of the Bureau of Land Management is affirmed as modified.

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Anne Pointdexter Lewis  
Administrative Judge

We concur.

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Edward W. Stuebing  
Administrative Judge

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Frederick Fishman  
Administrative Judge